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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,219	02/18/2004	Floyd Backes	160-027	1936

34845 7590 11/01/2006  
McGUINNESS & MANARAS LLP  
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EXAMINER

TRINH, TAN H

ART UNIT PAPER NUMBER

2618

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,219	BACKES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TAN TRINH	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on 10-28-2004, 04-28-2005, 05-26-2005 and 10-04-2005, the information disclosure statement has been considered by the examiner.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781,159. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 of the copending application teach all limitations in claims 1-5.

Art Unit: 2618

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 2 of copending Application No. 10/781,159 teaches detecting that one or more other access points are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power.

Regarding claims 2-5, claim 3 of copending application No. 10/781,159 teaches the power back off level indicative of the amount by which the access point's transmit power has been adjusted.

4. Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781, 474. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 of the copending application teach all limitations in claims 1-5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 2 of the copending Application No. 10/781, 474 teaches detecting that one or more other access points are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power.

Regarding claims 2-5, claim 3 of the copending Application No. 10/781, 474 teaches the power back off level indicative of the amount by which the access point's transmit power has been adjusted.

Art Unit: 2618

5. Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/781,137. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3 of the copending application teach all limitations in claims 1-5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claim 1, claim 2 of the copending Application No. 10/781,137 teaches detecting that one or more other access points are also using the radio frequency channel; and responsive to the detecting for adjusting transmit power.

Regarding claims 2-5, claim 3 of the copending Application No. 10/781,137 teaches the power back off level indicative of the amount by which the access point's transmit power has been adjusted.

6. Claims 1-5 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-5 of copending Application No. 10/781,535. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4-5 of the copending application teach all limitations in claims 1-5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claims 1-5, claims 4-5 of the copending Application No. 10/781,535 teaches the claimed limitations: maintaining a known devices table that is containing information about the access power level, wherein the known devices table includes an entry for each other device

Art Unit: 2618

operating on the radio frequency channel, a backoff value is recorded for each other device, the back off value for each device indicative of an amount that the device's power has been adjusted; transmitting a backoff value indicative of the amount by which the apparatus has adjusted its transmit power.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Shpak (U.S. Patent No. 6,907,229).

Regarding claim 1, Shpak teaches a method for use by a station capable of communicating in a wireless communications network via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile stations 24, 29 and 31), comprising the steps of: receiving a message from an access point (see col. 4, lines 36-44), the message containing information about the access point's power level (see col. 9, lines 5-17); adjusting transmit power in response to the information in the message (see col. 4, lines 40 - col. 5, lines 18), (Since second access point transmitting the second downlink signal includes adjusting a second downlink power level in response to the second uplink power level signal).

Regarding claim 2, Shpak teaches wherein the information is a transmit backoff level that indicates how far the access point's power has been reduced (see col. 8, lines 64 - col. 9, lines 17), (since the back off level is reduced level).

Regarding claim 3, Shpak teaches wherein the step of adjusting transmit power sets the station's transmit power to the transmit back off level received in the message (see col. 4, lines 40 - col. 5, lines 18, and col. 9, lines 5-17),

Regarding claim 4, Shpak teaches transmitting messages to other devices in the wireless communications network (see col. 9, lines 6-14), the messages including a power back off level indicative of the amount by which the station's transmit power has been adjusted (see fig. 2, and col. 9, lines 12 - col. 10, line 29, and also see col. 4, lines 40 - col. 5, lines 18, for access point is adjusting transmit power).

Regarding claim 5, Shpak teaches a method for use by a station capable of communicating in a wireless communications network via a radio frequency channel (see fig. 1, access points (AP) 22-23, 25 and 27, communication with multiple mobile stations 24, 29 and 31), comprising the steps of: receiving a message from an access point (see col. 4, lines 36-44), the message containing a transmit power back off level that indicates how far the access point's power has been reduced (see col. 8, lines 64 - col. 9, lines 17); adjusting transmit power by setting the station's transmit power to the transmit back off level received in the message (see col. 4, lines 40 - col. 5, lines 18, and col. 9, lines 5-17); and transmitting messages to other

Art Unit: 2618

devices in the wireless communications network (see col. 9, lines 6-14), the messages including a power backoff level indicative of the amount by which the station's transmit power has been adjusted (see fig. 2, and col. 9, lines 12 - col. 10, line 29, and also see col. 4, lines 40 - col. 5, lines 18, for access point is adjusting transmit power).

### ***Conclusion***

**9. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(571) 273-8300, (for Technology Center 2600 only)**

*Hand-delivered responses should be brought to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Trinh whose telephone number is (571) 272-7888. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiners supervisor, Anderson, Matthew D., can be reached at (571) 272-4177.

The fax phone number for the organization where this application or proceeding is assigned is **(571) 273-8300**.



Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Technology Center 2600 Customer Service Office** whose telephone number is **(703) 306-0377**.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tan H. Trinh  
Division 2618  
October 27, 2006

**PATENT EXAMINER**  
**TRINH, TAN**

A handwritten signature in black ink, appearing to read 'Tan H. Trinh', with a horizontal line drawn underneath it.